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REMARKS**Election/Restrictions:**

The claims of the instant application are the subject of a restriction requirement.

The Examiner has place the claims into the following two groups:

Group I: Claims 1 – 11, 13, 17, 24 and 33 – 34, which are drawn to a treated textile substrate, classified in class 442, subclass 59; and

Group II: Claims 12, 14 – 16, 18 – 23, 25 – 32 and 35, which are drawn to a composition for treating a textile substrate, classified in class 524, various subclasses.

During a telephone conversation on 4/28/05 with Brenda Wentz, Applicant elected Group I without traverse. Applicant hereby affirms the election to Group I.

Claim Objections:

Claims 5 and 6 have been amended to remove the tradename "Zinc Ormadine." This phrase has been replaced with the corresponding generic terminology of "zinc pyrithione." Applicant respectfully submits that this amendment does not present new matter.

Claims 13 and 17 were objected to because they depend from claims which have been withdrawn. Applicant has cancelled claims 13 and 17.

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35 USC Section 102 Rejections:

Claims 1 – 8 and 13 were rejected under 35 USC Section 102(b) as anticipated by Bullock et al. (US Patent No. 6,251,210).

The Examiner submits that Bullock et al. disclose a treated textile fabric comprising at least about 5 weight percent of a fluorochemical (Abstract). The primary treatment may also contain one or more antimicrobial agents, fluoropolymers, and cross-linked resins (col. 4, lines 42-44, col. 12, lines 7-31). The fluorochemicals provide water repellence and stain resistance (col. 12, lines 9-14). The Examiner further contends that Bullock et al. teach that the preferred latex component of the primary fluorochemical treatment may comprise acrylate copolymers and terpolymers of methylacrylate (co. 11, lines 17-49).

The Examiner further contends, with regard to claims 3 and 4, that the applied reference teaches the use of blocked isocyanates (col. 1, lines 62-67). With regard to claims 5 and 6, the Examiner submits that the applied reference teaches that the anti-microbial agent may include Zinc OmadineTM and triclosan (col. 11, lines 50-59). The Examiner also notes that preferred crosslinking resins and the associated crosslinkers of the applied patent are disclosed (col. 12, lines 25-41).

Applicants have cancelled claim 13. Additionally, Applicants have amended claim 1 to modify the concentration of the treating composition that is applied to the textile substrate. More specifically, Applicants now claim a concentration of less than about 4 weight percent. Support for this amendment can be found, for example, in the specification on page 15, lines 6-10. In contrast, Bullock et al. disclose a treated textile fabric that requires at least about 4 weight percent of a fluorochemical. As such, Applicants respectfully submit that since the concentration of treating composition now falls outside the scope of that taught by Bullock et al., and since each of claims 2 – 8 depend from each other or from claim 1, the rejection of claims 1 – 8 and 13 has been overcome.

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35 USC Section 102/103 Rejections:

Claims 9, 24 and 33 – 34 were rejected under 35 USC Section 102(b) as anticipated by, or in the alternative, under 35 USC Section 103(a) as obvious over Bullock et al.

The Examiner contends that the applied patent is silent as to the hydrophobicity of the disclosed crosslinking components, however as the invention is directed for use as a stain and water repellent textile fabric it is reasonable to presume that the crosslinking agents taught by Bullock et al. are hydrophobic. Additionally, while the applied patent is silent as to how it would perform according to the instantly disclosed test methods, the Examiner contends that if the prior art meets the chemical and compositional limitations instantly set forth, then it would be reasonable to presume that the applied article possesses the instantly disclosed properties.

Claim 9 depends indirectly from claim 1. Applicants have amended claim 1 to modify the concentration of the treating composition that is applied to the textile substrate. More specifically, Applicants now claim a concentration of less than about 4 weight percent. In contrast, Bullock et al. teach the need for at least about 4 weight percent on the surface of the treated fabric, which is a clear teaching away from Applicants' claimed invention. Case law states that "[A] prior art reference may be considered to teach away when 'a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.'" Monarch Knitting Machinery Corp. v. Sulzer Morat GmbH, 1998 WL 117765 at *8 (Fed. Cir. 1998); In re Gurley, 31 USPQ2d 1130, 1131 (Fed. Cir. 1994).

Thus, since claim 9 depends indirectly from currently amended claim 1, Applicants respectfully submit that the rejection of claim 9 has been overcome.

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With regard to claims 24 and 33-34, Applicants have amended independent claims 24 and 33 to include the limitation that the crosslinking component is a blocked isocyanate. Support for this amendment can be found, for instance, in Examples 1-3, which utilize a blocked isocyanate (Arkophob DAN). See also page 7, lines 12-18 of specification. Bullock et al. fail to teach blocked isocyanates as asserted by the Examiner in the current Office Action (page 4, item #10). The citation by the Examiner at column 1, lines 62-67 discloses the teachings of US Pat. Nos. 4,833,006 and 4,594,286, which use isocyanate compounds for coating textile fabrics. Accordingly, this citation by the Examiner of isocyanates is not a teaching by the Bullock reference itself, but rather a teaching from other US patents.

Furthermore, the reason Bullock et al. mentions the use of isocyanates for textile fabrics is to make the point that fabrics coated with such isocyanate compounds achieve "a coarse, waxy hand and feel, exhibit little water vapor permeability, are not resistant to organic solvents, and are limited in the manner in which they can be printed" (col. 1, lines 64-67). Accordingly, Applicants respectfully submit that Bullock et al. teach away from Applicants' claimed invention by discouraging one of ordinary skill in the art from using isocyanate materials to coat a textile substrate. Case law states that "[A] prior art reference may be considered to teach away when 'a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.'"

Monarch Knitting Machinery Corp. v. Sulzer Morat GmbH, 1998 WL 117765 at *8 (Fed. Cir. 1998); In re Gurley, 31 USPQ2d 1130, 1131 (Fed. Cir. 1994).

Thus, since Bullock et al. fail to teach the use of isocyanate components, Applicants respectfully submit that the novelty rejection of claims 24 and 33-34 has been overcome. Additionally, since Bullock et al. actually teach away from the use of isocyanate components, Applicants respectfully submit that the obviousness rejection has been overcome.

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35 USC Section 103 Rejections:

Claim 11 was rejected under 35 USC Section 103(a) as unpatentable over Bullock et al. The Examiner submits that Bullock discloses that the textile is to be coated on both sides with the fluorochemical composition, but that it would have been obvious to have only coated one side of the textile. The skilled artisan would have been motivated by the desire to decrease production costs and time as well as to improve "hand" of the textile through the reduction of polymeric coating.

Claim 11 depends from claim 1. Applicants have amended claim 1 to modify the concentration of the treating composition that is applied to the textile substrate. More specifically, Applicants now claim a concentration of less than about 4 weight percent. In contrast, Bullock et al. teach the need for at least about 4 weight percent on the surface of the treated fabric, which is a clear teaching away from Applicants' claimed invention. Case law states that "[A] prior art reference may be considered to teach away when 'a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.'" Monarch Knitting Machinery Corp. v. Sulzer Morat GmbH, 1998 WL 117765 at *8 (Fed. Cir. 1998); In re Gurley, 31 USPQ2d 1130, 1131 (Fed. Cir. 1994).

Thus, since claim 11 depends from currently amended claim 1, Applicants respectfully submit that the rejection of claim 11 has been overcome.

Claim 10 was rejected under 35 USC Section 103(a) as unpatentable over Bullock et al. in view of Fitzgerald et al. The Examiner notes that the invention of Bullock has been discussed above, but is silent as to the specific fluoropolymers to be used in the treated textile. Thus, the Examiner cites Fitzgerald as teaching fluoropolymers that include perfluoroalkyl groups connected to polyurethane or (meth)acrylate groups (col. 1, lines 60-67) and that furthermore, (meth)acrylate groups include methacrylate, acrylate, or

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a combination of these groups (col. 1, line 67 - col. 2, line 2). Thus, the Examiner believes that it would have been obvious to one skilled in the art to have made the fluorochemical composition of Bullock with the fluoropolymers of Fitzgerald motivated by the desire to make a treated textile product with oil and water repellent properties.

Claim 10 depends indirectly from claim 1. Applicants have amended claim 1 to modify the concentration of the treating composition that is applied to the textile substrate. More specifically, Applicants now claim a concentration of less than about 4 weight percent. In contrast, Bullock et al. teach the need for at least about 4 weight percent on the surface of the treated fabric, which is a clear teaching away from Applicants' claimed invention. Case law states that "[A] prior art reference may be considered to teach away when 'a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.'" Monarch Knitting Machinery Corp. v. Sulzer Morat GmbH, 1998 WL 117765 at *8 (Fed. Cir. 1998); In re Gurley, 31 USPQ2d 1130, 1131 (Fed. Cir. 1994).

Thus, since claim 10 depends from currently amended claim 1, Applicants respectfully submit that the rejection of claim 10 has been overcome.

Claim 17 was rejected under 35 USC Section 103(a) as being unpatentable over Bullock et al. in view of Oharu et al.

Applicant has cancelled claim 17. Thus, the rejection of this claim is now moot.

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Conclusion:

For the reasons set forth above, it is respectfully submitted that all claims now stand in condition for allowance.

Should any issues remain after consideration of this Amendment and accompanying Remarks, the Examiner is invited and encouraged to telephone the undersigned in the hope that any such issue may be promptly and satisfactorily resolved.

In the event that there are additional fees associated with the submission of these papers (including extension of time fees), authorization is hereby provided to withdraw such fees from Deposit Account No. 04-0500.

September 6, 2005

Respectfully submitted,

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